

Application Serial No. 10/003,877
Response to Office Action dated October 22, 2003
Reply to Office Action of April 24, 2003

REMARKS

In the 04/24/03 Office Action, the Examiner rejected all claims as being obvious mainly over U.S. Patent No. 4,793,323 to Guida, although claims 4 and 5 were rejected over Guida in view of U.S. Patent No. 2,300,793 to Martin. For the reasons which follow, applicant requests reconsideration of those rejections.

In rejecting claim 1, the Examiner stated:

In regard to the limitation of claim 1 that the walls of the first cup are formed of a plastic of sufficient thinness and have a sufficiently low Vicat Softening Point such that the walls expand upon mixing of the two reactants, *Guida et al.* discloses that the walls of chamber (7) are made of polypropylene (see col. 6, lines 7-9) and describes a thickness of the walls as .5mm (see col. 6, lines 25-30). Applicant discloses in the specification that polypropylene is a material with a suitable Vicat Softening Point and the range of wall thinness from .001mm to .65mm (see specification pg. 13). Therefore, as the material and thickness are those specified by applicant, it would be inherent that the walls of *Guida et al.* would have a sufficiently low Vicat Softening Point. (emphasis added)

In the above paragraph, the Examiner seems to imply that page 13 of applicant's specification discloses that applicant's upper cup walls may be polypropylene 0.001mm to 0.65mm thick and still have a suitable Vicat Softening. Particularly as the Examiner states, "the material and thickness are those specified by applicant." However, page 13 discloses nothing of the sort. The relevant portion of applicant's specification begins at the bottom of page 12 and reads:

While the present invention is not limited to a particular plastic compound, a preferred embodiment of upper cup 10 is constructed of polyvinyl chloride (PVC) or polystyrene (PS), ideally through a vacuum forming process. However, other plastics, including but not limited to low-density polyethylene, high-density

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polyethylene, polypropylene, or even rubberized plastics or latex plastics may be suitable under certain circumstances for the various elements of module 1. Additionally, the walls of upper cup 10, like the walls of other elements of module 1, could vary between about 0.001 mm to 0.65 mm depending upon the type of plastic used. More preferably, these wall thickness will vary from about 0.05 to 0.3 mm. In regards to upper cup 10, one preferred embodiment will have a wall thickness less than about 0.2 mm. (emphasis added)

Applicant never implies that polyethylene walls approximately 0.5 thick will have a sufficient Vicat Softening Point. Applicant merely states that polypropylene "may be suitable under certain circumstances for the various elements of module 1." The specification also makes it clear that the walls of upper cup 10 may vary between about 0.001 mm to 0.65 mm depending upon the type of plastic used. The Examiner's implication that Guida's "material and thickness are those specified by applicant" is clearly incorrect. Furthermore, it is apparent that this erroneous assumption was the basis for the Examiner's "inherency" rejection. There is no indication in applicant's specification that applicant uses 0.5 mm polypropylene in the first cup or that 0.5 mm polypropylene would have the Vicat Softening Point required by claim 1.

Indeed, the most likely implication from the prior art is that 0.5 mm polyethylene would not have a suitable Vicat Softening Point for the purposes of the present invention. Guida employs 0.5 mm polyethylene as the main structural feature of his container. Clearly the polyethylene is going to get quite hot as the reactants mix. It makes no sense that Guida would use a type of material and thickness of material which would become extremely plastic when heated. The Guida container would deform and not be useable for its intended purpose. The only logical conclusion which may be drawn from the Guida disclosure is that 0.5 mm thick

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polyethylene does not become plastic at the temperatures encountered using calcium chloride or calcium oxide mixed with water.

Again, applicant emphasizes that his specification does not teach anything to the contrary. There is simply no sound basis for concluding that Guida discloses or suggests a first cup formed of a plastic of sufficient thinness and having a sufficiently low Vicat Softening Point such that the plastic walls expand into contact with the internal walls of the cavity upon mixing of the reactants. Since there is no cited prior art reference disclosing or suggesting this limitation, the rejection of claim 1 should clearly be withdrawn.

In rejecting claims 2, 3, 6-15, 17, 24, and 29, the Examiner makes the same misreading of applicant's disclosure as in claim 1. The Examiner stated, "While these claims are limiting to the recited temperatures, wall thinnesses, and materials as noted in applicant's specification (pg. 13), these attributes of the container are described as the equivalent of the polypropylene and wall thinness as disclosed by Guida et al." Again, applicant's disclosure does not indicate that applicant employs an upper cup polypropylene wall 0.5 mm thick or that such is equivalent to the claimed Vicat Softening Point.

Applicant also points out that the Examiner did not give a specific basis for rejecting claims 16-18. Claim 16 recites a first cup formed of a frame structure with side windows. Applicant submits Guida does not disclose anything even remotely resembling a frame structure or side windows. Furthermore, even if the Examiner does not think the frame structure and side windows are sufficiently definite limitations, claim 17 recites aluminum foil as the material covering the side windows. There is no reasonable interpretation of Guida that would suggest

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any part of it is formed from aluminum foil, much less that the reactant containing section includes aluminum foil. While Guida does show an aluminum food cup, this cup is clearly not "foil" (i.e., the Guida cup is 1.5-2.5 mm in wall thickness) and more importantly, does not enclose a first reactant as implied by claim 16. Applicant respectfully submits that this rejection should be withdrawn, or at the very least, a clear explanation given as to why the Examiner believes Guida suggests the limitations in claims 16-18.

Applicant has also added new claim 31 which recites a self-heating container with a cavity formed of metal internal walls and a thermic module formed of a plastic cup shaped to fit in close proximity to the internal walls. This should even further distinguish claim 31 from Guida. Even if the Examiner tries to equate Guida's reaction compartment 7 with the claimed cavity and Guida's aluminum container with the claimed metal internal wall, there is no plastic cup positioned within Guida's reaction compartment in close proximity to the metal internal wall. Guida has no structure in close proximity to its metal cup. There is simply no rational interpretation of Guida that suggests the limitations of claim 31.

In regards to claims 19-27, applicant has amended claim 19 to recite that the vent includes a vent seal positioned between the end cap and a lip formed on the bottom cup. This is clearly distinguishable over Guida which forms the vent in the side wall of the container. There is nothing in Guida which would suggest relocating the vent seal from the container side wall to the end cap area or more particularly positioning the vent seal between the end cap and a lip formed on a bottom cup. Based upon these reasons, applicant submits that the rejection of claim 19 and the claims depending therefrom should be withdrawn.

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In regards to claims 28-30, the Examiner again does not appear to have specifically addressed these claims. There is no indication that Guida discloses the method of first sterilizing the contents of the container and then inserting a thermic module into the container. Moreover, claim 28 recites the thermic module as containing two reactants. Guida can only be said to have one reactant within a cup or module. The other reactant is placed directly in the container cavity. Guida does not disclose or suggest these limitation found in claim 28. If the Examiner maintains the rejection of claims 28-30 over Guida, applicant requests the Examiner at least provide a detailed explanation of how the limitations of claim 28 are found in Guida.

Finally, applicant is not specifically addressing the rejection of claims 4 and 5, but notes that these claims depend from claim 1, which should be considered allowable for the reasons given above. Applicant believes he has addressed all rejections in the 04/25/03 Office Action and requests favorable action on all claims.

CONCLUSIONS

It is believed that the application is now in a condition for allowance. It is therefore respectfully requested that the Examiner reconsider the rejections made in light of the amendments and remarks presented herein, and that the remaining pending claims be allowed. The undersigned asks that the Examiner contact him at (225) 248-2106 if he has any questions so that early allowance might be reached.

Additionally, the Commissioner is hereby authorized to charge the additional claim fee to deposit account 50-1896. This charge should be \$43.00.

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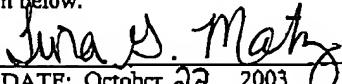
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